

**KENTUCKY PERSONNEL BOARD
MINUTES OF OCTOBER 7, 2011**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on October 7, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
Susan Gardner, Member
Donald W. "Don" Blevins, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPTEMBER 9, 2011**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Blevins seconded, and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Board members were provided a copy of an Order from the Franklin Circuit Court granting the Agency's motion to dismiss in *Roger Bryant v. Tourism, Arts & Heritage Cabinet* (11-CI-00099). In this case the Appellant did not timely file an appeal in the Franklin Circuit Court within the required thirty days of the Board's Final Order.

Mr. Sipek stated that he, Mr. Crocker, and Mr. Gillis spoke at the IPMA conference to discuss Board appeals with Human Resources' professionals and received their feedback.

On October 6, Mr. Sipek stated that he attended the Governor's Ambassador Awards Ceremony. Mr. Sipek stated that all the mediators with the Kentucky Employees Mediation Program were nominated. The Governor's Office of Technology won the award, which was well-deserved.

Proposed Amendment to 101 KAR 1:365. Appeal and Hearing Procedures

Mr. Sipek stated that there were several changes made to the regulation and the Appeal Form. The Board members agreed to postpone discussing this matter until the end of the meeting during open session.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, on behalf of the Personnel Cabinet, came forward to present the Cabinet's report.

Ms. Bevington stated that as a follow-up to Mr. Sipek's statement concerning the Governor's Ambassador Awards, it is Public Service Recognition Week which recognizes employees for a job well done.

Ms. Bevington advised that open enrollment information for the Kentucky Employees' Health Plan for 2011 has been sent out to all employees and plan members, along with information about benefits fairs.

Of interest, Ms. Bevington stated that on October 31, 2006, 588 employees were laid off from Oakwood, which was part of the Cabinet for Health and Family Services. If an employee is an employment candidate with reemployment rights after a lay-off, they have five years to exercise those rights. The Personnel Cabinet has sent out a memo to inform those employees that their reemployment rights will expire at the end of the month. Of the 588 employees, 51 found jobs before layoff, 11 retired, and 114 were rehired as reemployment candidates. Therefore, there are 412 former employees

whose reemployment rights will expire, and of that amount 16 are actively reapplying. Ms. Bevington stated that they have a liaison at the Personnel Cabinet currently working with these individuals. In answer to Chairman Sapp's question concerning the progress of the Oakwood facility, Ms. Bevington stated that the Bluegrass Board overtook management and they are doing well.

The Governor's 25th Annual EEO Conference is scheduled for October 18, 2011, in Louisville. Former Governor Martha Layne Collins will be the keynote speaker.

Ms. Bevington advised that employees deploying for military leave will be handled differently through KHRIS (Kentucky Human Resource Information System). Employees will get twenty-one military leave days each Federal fiscal year. A packet is provided to deploying military employees to advise them of their rights and how to utilize their benefits.

Upon conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

5. ORAL ARGUMENTS

A. Heather Guisto v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were the Appellant, Heather Guisto, counsel for Appellant, the Hon. John Frith Stewart, and counsel for Appellee, the Hon. Wesley Duke. The parties answered questions from the Board.

6. INVESTIGATIONS

Department of Revenue - Request by Jeffery Hayes
(Discussion moved to the end of the Agenda.)

7. CLOSED SESSION

Ms. Gardner moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:30 a.m.)

Ms. Gardner moved to return to open session. Mr. Gillis seconded and the motion carried 5-0. (11:50 a.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Heather Guisto v. Justice and Public Safety Cabinet (Corrections)

Mr. Blevins moved to note Appellee's exceptions, Appellant's response and oral argument and to remand this matter back to the hearing officer for an evidentiary hearing on the merits. Mr. Gillis seconded and the motion carried 4-1, with Ms. Gardner opposing.

B. Michael Eckerle v. Transportation Cabinet **(Deferred from September)**

Dr. Stevens moved to note Appellee's exceptions, oral argument and to accept the Final Order dismissing the appeal, as attached to the minutes. Mr. Blevins seconded and the motion carried 5-0.

C. Laura Penn v. Justice and Public Safety Cabinet (Public Advocacy)
(Deferred from August and September Meetings)

Ms. Gardner moved to note Appellee's exceptions, Appellant's response, oral arguments and to accept the Final Order sustaining the appeal to the extent therein, as attached to the minutes. Dr. Stevens seconded and the motion carried 5-0.

D. Derek Coffey v. Justice and Public Safety Cabinet (State Police)

Ms. Gardner moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

E. Joe Neal Martin v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 5-0.

F. David Spears v. Tourism, Arts and Heritage Cabinet (Parks)

Mr. Blevins moved to accept the recommended order sustaining the appeal to the extent therein. Dr. Stevens seconded and the motion carried 5-0.

G. Gibson Togunde v. Justice and Public Safety Cabinet (Juvenile Justice) –
(On Remand)

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

H. John Wilson v. Justice and Public Safety Cabinet (Public Advocacy)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 5-0.

I. Michelle Womack v. Public Protection Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 4-0, with Ms. Gardner recusing.

J. Marlene Wright v. Cabinet for Health and Family Services

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

K. Priscilla Zuniga v. Justice and Public Safety Cabinet (Juvenile Justice)

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

Show Cause Orders – No Responses Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

L. Sherry Green v. Cabinet for Health and Family Services

M. Claudia Jackson v. Cabinet for Health and Family Services

N. James Wooldridge v. Justice and Public Safety Cabinet (Corrections)

Ms. Gardner moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Mr. Gillis seconded and the motion carried 5-0.

9. **WITHDRAWALS**

Mr. Blevins moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 5-0.

A. Candy Barton v. Personnel Cabinet

B. Melanie Jenkins v. Personnel Cabinet

C. Terry Skaggs v. Cabinet for Health and Family Services

D. Cecil Roger Sullivan v. Personnel Cabinet (2 appeals)

E. Thomas Waters v. Justice and Public Safety Cabinet (Corrections)

F. Rhonda Berry v. Public Protection Cabinet

G. Admir Celik v. Transportation Cabinet

10. SETTLEMENTS

Dr. Stevens moved to accept the following settlements *en bloc* and to accept the settlements as submitted by the parties; sustaining the appeal to the extent set forth in the settlement. Ms. Gardner seconded and the motion carried 4-0, with Mr. Gillis recusing.

- A. Betty Collins v. Tourism, Arts and Heritage Cabinet (Parks) (mediated)
- B. Jacqueline Judkins v. Cabinet for Health and Family Services
- C. Rachel Ratliff v. Cabinet for Health and Family Services
- D. James E. Thompson, Jr. v. Department of Agriculture (mediated)
- E. Rebecca Wheat v. Department of Agriculture
- F. George Juilfs v. Energy and Environment Cabinet
- G. Elizabeth Hope Howell v. Tourism, Arts and Heritage Cabinet (Parks) –
3 appeals

11. OTHER

Proposed Amendment to 101 KAR 1:365. Appeal and Hearing Procedures

Mr. Blevins asked for a summary of the substantive changes. Mr. Sipek stated that one substantive change would be to allow electronic filings (i.e. e-mail or fax). In the past, faxed documents were to be followed up with a hard copy in the mail. That requirement is being amended because of improvements in technology and the Court of Appeals complaint of the numerous duplicate copies in the record, which can be confusing. If there is a question regarding a signature, the Appellants will be advised to retain the originals in case the document is needed.

Another change is to allow Appellants limited use of state equipment with approval from the agency, supervisor or the Hearing Officer of the Personnel Board. For example, taking phone calls for pre-hearings at work (as opposed to taking leave and disrupting the day) or answering an e-mail from the opposing party or the Personnel Board.

Mr. Gillis raised concerns regarding a supervisor allowing an employee to file an appeal on state time. Mr. Gillis specified that opening an e-mail on state time should be allowed, but he is concerned about supervisor approval. Mr. Sipek stated the intent in including this language was to allow limited use of state equipment by state employees (for example phone calls or opening an e-mail), which is probably occurring anyway.

There is no reason for strict prohibition, when there can be agency regulation, as Mr. Blevins stated, "The way things are, not the way they ought to be." Mr. Sipek stated that by allowing multiple authority, it will promote communication. Ms. Gardner stated there will be instances where a supervisor will deny the employee's request. Mr. Sipek stated that allowing employees limited use of state equipment can solve problems for the Board and agency counsel when scheduling a date for evidentiary hearing or pre-hearing conference that is favorable to both parties, or if there is an issue that needs quick resolution.

Mr. Gillis stated that there is an Ethics opinion that prohibits employees from using state time or state equipment. Mr. Gillis stated that if the regulation goes into effect, the Ethics Commission should be notified so that their opinion can be modified. Mr. Sipek stated that if the regulation goes into effect, the Ethics Commission will be notified and if they feel the need to modify their directive they can.

Other changes are to specifically allow for telephonic pre-hearing conferences; telephonic continuances by agreement of the parties; consolidation of appeals without consent of the parties by order of the hearing officer (specifically Mr. Sipek or Mr. Crocker); and extending the timeframe for a party to file a response to exceptions.

Mr. Crocker added that the Appeal Form was amended to replace the Social Security Number with the Employee ID Number and a box for "Promotion" was added to the list of appealable actions.

Dr. Stevens moved to accept the amendments to 101 KAR 1:365. Mr. Blevins seconded and the motion carried 5-0.

Investigation Request by Jeffery Hayes - Department of Revenue

Mr. Travis Powell, Finance and Administration Cabinet, was present to answer questions.

Mr. Sipek advised that Jeffery Hayes had filed an appeal (No. 2011-135) entailing religious discrimination and other issues. During that process Hayes had requested an investigation of the same issues.

Mr. Crocker stated that he had a pre-hearing conference with Mr. Hayes back in August 2011 and requested Mr. Hayes to provide a written request for investigation. Mr. Hayes thereafter replied by e-mail.

Mr. Gillis asked about Hayes' complaint #2 of the e-mail concerning favoritism toward Ms. Anna Hawkins receiving a reclassification, along with another employee Ms. Lori Coleman. Per Travis Powell, Ms. Coleman had filed an appeal stating she was improperly classified. After a desk audit was completed by the Personnel Cabinet it was determined that Ms. Coleman should be reclassified from a Revenue Auditor III to a Revenue Auditor IV. The Agency then entered a settlement agreement with Ms. Coleman. As to Ms. Hawkins, she was reclassified Auditor III to a Revenue Auditor IV but did not receive an increase in pay.

Mr. Crocker had advised Mr. Hayes via telephone that the request for investigation was on the Board's October agenda. Mr. Hayes wanted the investigation request to come before the Board in October, but had not planned on attending the meeting.

Dr. Stevens moved to defer this matter until Mr. Hayes' appeal process was completed. Ms. Gardner seconded and the motion carried 5-0.

There being no further business, Mr. Gillis moved to adjourn. Ms. Gardner seconded and the motion carried 5-0. (12:32 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

Susan Gardner, Member

Donald W. Blevins, Member